

Notice of Allowability

Application No.

09/631,339

Examiner

William H. Beisner

Applicant(s)

WITTWER ET AL.

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the telephone interview dated 4/16/2007.
2. ☒ The allowed claim(s) is/are 1-3, 5, 6, 9-12, 15, 19, 20 and 23-27.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 4/23/07 .
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with John P. Breen on 4/16/2007.

The application has been amended as follows:

IN THE SPECIFICATION:

Page 1, line 8, --(now U.S. Patent No. 7,081,226)-- has been inserted after "June 4, 1997".

Page 1, line 12, --(now abandoned)-- has been inserted after "October 2, 1995".

Page 1, line 24, --(now U.S. Patent No. 6,174,670) has been inserted after "08/869,276".

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IN THE CLAIMS:

19. (Currently Amended) A container for holding a fluidic biological sample while undergoing nucleic acid amplification, the container consisting of:

a receiving portion having a first volume, the receiving portion being adapted to receive the biological sample therein; and

a reaction portion consisting of a capillary tube that is closed at one end. The container of claim 1 wherein the capillary tube has an inner diameter in the range from about 0.02 mm to about 0.1mm, and a capillary tube wall about 0.1 mm thick, said reaction portion being in fluidic communication with the receiving portion such that the biological sample placed in the receiving portion can travel to the reaction portion, the reaction portion having an internal volume not greater than a second volume, the second volume being less than the first volume and not greater than 1 milliliter, said reaction portion comprised of material having a thermal conductivity in the range from about 20 to about 35 in accordance with the formula:

$$\left(\frac{\text{cal cm}}{\text{cm}^2 \text{ s degree C}} \right) \times 10^4$$

REASONS FOR ALLOWANCE

2. The following is an examiner's statement of reasons for allowance:

Claims 1-3, 5, 6, 9-12, 15, 19, 20 and 23-27 are allowable because while the prior art of record suggests the use of a thin-walled capillary tube in the device of von Behrens as suggested by the reference of Fite et al., none of the prior art references teach or suggest the additional claim feature that the inner diameter of the tube is from about 0.25mm to about 1.0mm or from about 0.02mm to about 0.1mm which is critical to the instant invention for optimization of rapid and uniform temperature modulation of the sample.

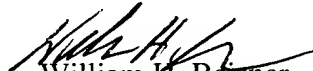
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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 571-272-1269. The examiner can normally be reached on Tues. to Fri. and alt. Mon. from 6:15am to 3:45pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gladys J. Corcoran can be reached on 571-272-1214. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


William H. Beisner
Primary Examiner
Art Unit 1744

WHB